NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 1324 of 2024

[Arising out of the Order dated June 13, 2024 passed by the 'Adjudicating Authority' (National Company Law Tribunal, New Delhi) in CP (IB) No. 24(ND)/2023]

IN THE MATTER OF:

Mahdoom Bava Bahrudeen Noorul Ameen
S/o Noorul Ameen
R/o B-7, Parsn Guruprasad Resident Complex
No. 432 (204), T.T.K. Road, Alwarpet, Teynampet
Chennai, Tamil Nadu – 600018
Email: mahdoombava@gmail.com **...Appellant**

Versus

1. **State Bank of India**
Through Stressed Assets Management Branch-I
Having its office at:
12th Floor, Jawahar Vyapar Bhawan
1 Tosltoy Marg, New Delhi – 110001 **...Respondent No.1**

2. **Mr. Deepak Mittal**
Resolution Professional
Having IBBI Registration No.
IBBI/IPA-001/IP-PO2096/20-21/13264
Address: R-4/39, Raj Nagar, Ghaziabad **...Respondent No.2**

Present:

For Appellant : Mr. Siddharth Khattar, Mr. Divij Andley and Mr. Gaurav Parewa, Advocates.

For Respondent : Mr. Siddharth Sangal, Mr. Chirag Sharma, Ms. Richa Mishra and Ms. Harshita Agarwal, Advocates for R-1.

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

This is an appeal filed under Section 61(3) in conjunction with Section 61(1) of the Insolvency and Bankruptcy Code, 2016 ("IBC"). The appeal is against the order dated June 13, 2024, issued by the Adjudicating Authority (National Company Law Tribunal, New Delhi) in CP (IB) No. 24(ND)/2023.

Through this order, the Personal Insolvency Resolution Process was initiated against the Appellant, who is the Personal Guarantor (PG).

Brief facts of the case

2. Brief chronology relevant for appreciation of the issues involved in the case is a follows:

1.	2007-2012	NaftoGaz India Pvt Ltd took various credit facilities from SBI and SBBJ in which the Appellant was the Personal Guarantor.
2.	28.01.2012	Loan account of NaftoGaz India Pvt Ltd was classified as NPA by SBBJ
3.	13.06.2012	Loan account of NaftoGaz India Pvt Ltd was classified as NPA by the SBI
4.	08.10.2012	NaftoGaz India Pvt Ltd went into liquidation vide Order passed by the High Court of Delhi.
5.	26.12.2013	SBI sent Demand Notice dated 26.12.2013 under Section 13(2) of SARFAESI Act, 2002, calling upon to repay the amount of Rs 64.48 crs (approx.).
6.	2014	SBI filed OA No. 133 of 2014 before the Debt Recovery Tribunal, New Delhi, and the same is pending adjudication till date.
7.	28.06.2021	Respondent No. 1/SBI sent a Demand Notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rule, 2019, demanding payment of Rs 264.61 crs - as on 31.05.2021.
8.	03.12.2022	Respondent No. 1 filed the Application under Section 95(1) of IBC seeking initiation of Personal Insolvency Resolution Process against the Appellant (PG) r/w Rule 7(2) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process Guarantors to Corporate Debtors) Rules 2019 with an outstanding default amount of Rs. 315 crs (approx.) as on 30.06.2022.
9.	05.12.2023	NCLT appointed Mr Deepak Mittal as the Resolution Professional and directed him to file report in terms of Section 99 of IBC.
10	22.03.2024	Resolution Professional filed his report vide IA No. 1592/2024.
11	25.04.2024	Appellant filed his objections to IA No. 1592/2024.
12	29.05.2024	Pursuant to completion of pleadings, the arguments were concluded and the order was reserved on the said date. The parties were also given liberty to file their written submissions.
13	05.06.2024	SBI filed its written submissions.
14	06.06.2024	Appellant filed its written submissions.
15	13.06.2024	AA passed the Impugned Order under section 100 IBC.
16	16.06.2024	Resolution Professional published a public announcement in two newspapers on 15.06.2024 and the said fact was communicated to the Appellant vide email.

3. In his Appeal the Appellant has raised the grounds with respect to the limitation period, service of Demand Notice at the wrong address, and also a

difference in the amount sought in the Demand Notice r/w Rule 7(1)[1] of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process Guarantors to Corporate Debtors) Rules, 2019, and the Section 95(1) Application r/w Rule 7(2) of the Financial Creditor/Applicant i.e. State Bank of India (SBI). No details of two loans were provided except for the account numbers. The Application under Section 95(1)[2] was finally decided by the Adjudicating Authority on 13.06.2024, while overruling the objections of the PG, and Personal Insolvency Resolution Process (PIRP) was initiated against the Appellant.

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1 Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process Guarantors to Corporate Debtors) Rules 2019

> 7. **Application by creditor**.— (1) A demand notice under clause (b) of sub-section (4) of section 95 shall be served on the guarantor demanding payment of the amount of default, in Form B.

2 Section 95 of the Insolvency and Bankruptcy Code 2016

> **Section 95**. Application by creditor to initiate insolvency resolution process.
> **(1)** A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.
> **(2)** A creditor may apply under sub-section *(1)* in relation to any partnership debt owed to him for initiating an insolvency resolution process against—
> (a) any one or more partners of the firm; or
> (b) the firm.
> (3) Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.
> (4) An application under sub-section *(1)* shall be accompanied with details and documents relating to—
> (a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;
> (b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and
> (c) relevant evidence of such default or non-repayment of debt.
> (5) The creditor shall also provide a copy of the application made under sub-section *(1)* to the debtor.
> (6) The application referred to in sub-section *(1)* shall be in such form and manner and accompanied by such fee as may be prescribed.
> (7) The details and documents required to be submitted under sub-section *(4)* shall be such as may be specified.

Submissions of the Appellant – PG

4. The Appellant is an individual who was the PG to the credit facilities taken from State Bank of India (SBI) and State Bank of Bikaner and Jaipur (SBBJ) (this bank merged into SBI on 31.03.2017) by Naftogaz India Private Limited. This company went into liquidation vide order dated 08.12.2010 as per the orders of the Hon'ble High Court of Delhi. The loan account of Company was classified as NPA on 28.01.2012 by SBBJ and by SBI later on 13.06.2012. SBI sent a Demand Notice dated 26.12.2013 under Section 13(2) of SARFAESI Act, 2002[3] calling upon the Company and the Appellant to repay the amount of about Rs 64.48 crores. Later on, in the year 2014, SBI also filed OA No. 133 of 2014 before the Debt Recovery Tribunal (DRT), New Delhi, and the same is still pending. No decree has been passed in the same. After about 7 years, in 2021, Respondent No.1-SBI sent a Demand Notice dated 28.06.2021 under Rule 7(1)[1] demanding payment of about Rs 264 cores. This Demand Notice refers to four loan accounts, two from SBI (i.e. CC(SBI)-30451182299 and BG(SBI)-30449964100) and two from SBBJ (CC)SBBJ)-61253087296 and BG(SBBJ)-61074975160). No explanation was provided as to how the figure of Rs 264.61 crores was arrived at, or against

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[3] **The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [SARFAESI Act 2002]**

Section 13. Enforcement of security interest

(1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the <u>secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section *(4)*</u>.

which loan account how much amount was sought for. It is also claimed that the Application under Section 95(1) of IBC mentions only one loan account of SBI out of the four loan accounts. Respondent No. 1 – SBI filed Application under Section 95(1) of IBC seeking initiation of PIRP against the Appellant in the capacity as PG. In the proceedings before the NCLT, New Delhi, the arguments were concluded on 29.05.2024 and the orders were reserved on the same date. While hearing the arguments on the aspects of the limitation, the Counsel for the Respondent No.1-SBI handed over the copy of the recovery certificate as well as the judgment- both dated 17.03.2018, passed by DRT, New Delhi, in O.A. No. 213/2014 titled as SBI (formerly known as SBBJ) and now incorporated in SBI vs Naftogaz India Private Limited & Ors. The account of CD was classified as NPA on 13.06.2012 by SBI and the Demand Notice under Rule 7(1)[1] was sent to the Appellant on 28.06.2021 i.e. after nine years and, therefore, the Application was claimed to be barred by limitation.

5. To overcome the point of limitation, the Respondent No.1-SBI handed over the recovery certificate of O.A. No.213/2014 dated 17.03.2018, which pertained to SBBJ to show that part of the debt, as demanded in the Demand Notice, crystallised by way of decree on 17.03.2018 and, thus, the part of the claim was within limitation. It is to be noted that this recovery certificate is for Rs 17.63 crores, along with interest, whereas, the amount demanded in the Demand Notice was Rs 264.61 crores and the amount demanded in the Application under Section 95(1) of IBC was Rs 315.30 crores. The perusal of the judgment dated 17.03.2018 shows that the said O.A. was filed on

03.07.2014 for recovery of Rs 17.61 cores along with interest. Further, the CD had approached SBBJ on 27.06.2007 for a loan of Rs 4.05 crores, and this account had become NPA on 28.01.2012. SARFAESI Notice was sent on 26.12.2012, demanding Rs 25.97 crores as on 25.12.2013. There is no reference to this in the Demand Notice, which has been issued on 28.06.2021, demanding Rs 264.61 crores. Current Demand Notice and the Application under Section 95(1) of IBC are vague, do not pertain to dues of SBBJ and, therefore, the recovery certificate dated 17.03.2018 will not help Respondent No.1-SBI to bring the alleged debt within the period of limitation as the two debts are separate and no demand under Rule 7(1) was made pertaining to the debts of SBBJ.

6. Respondent No.1-SBI was always aware of the address of the Appellant i.e. 64, Poorvi Marg, Second Floor, Vasant Vihar, New Delhi-110057. This address was also on the records of the proceedings of the DRT, New Delhi. Despite knowing the correct address, email address and mobile number of the Appellant, the Respondent No.1 chose not to serve the Demand Notice to the Appellant on the correct address and email ID, instead chose to send the Demand Notice on the address of E-14/13, Ground Floor, Vasant Vihar, New Delhi-110070. This, the letter was the address of the company which has gone into liquidation vide order dated 08.10.2012 by Hon'ble High Court of Delhi in the matter titled as Royal Marine vs Naftogaz India Private Limited being Company Petition No. 128 of 2011. The aforesaid company/residence of the Appellant and other assets of the Company including books of

accounts were taken over by the Official Liquidator attached to the Hon'ble High Court of Delhi.

7. It is the contention of the Appellant that where a statute requires a particular act to be done in a particular manner, the act has to be done in that manner alone and, therefore, the service of Demand Notice under Rule 7(1) cannot be substituted with the service of notice under Section 13(2) of SARFAESI Act, 2002. The service of Demand Notice under Rule 7(1) is a mandatory provision and cannot be overridden by any other Demand Notice under any other act/statute.

8. It is claimed that the amount sought in the Demand Notice and Application under Section 95(1) of IBC are totally vague and no documents have been placed on record to reach to the figure as has been sought in the Demand Notice or the Application under Section 95(1) of IBC.

9. The Appellant prays to set aside the Impugned Order dated 13.06.2024 on this these grounds.

Submissions of the Respondent No.1 - SBI:

10. The Appellant moved the Hon'ble Supreme Court to challenge the 'Interim Order' dated 16.07.2024 passed by this Hon'ble Appellate Tribunal by filing Civil Appeal No. 8622 of 2024, which was dismissed by the Hon'ble Supreme Court by its Order dated 20.08.2024. The relevant extract is as follows:

> "1. The Appeal arises from an interlocutory order dated 16 July 2024 of the National Company Law Appellate Tribunal.
>
> 2. The proceedings have been posted for hearing before the NCLAT on 2 September-2024. Hence, we are not exercising jurisdiction at this stage.

3. All the questions of law which have been raised by the appellant, may be addressed before and will be considered by NCLAT, when the proceedings will be taken up on 2 September 2024.

4. The Appeal is accordingly dismissed.

5. Pending applications, if any, stand disposed of."

11. It is claimed that the Impugned Order dated 13.06.2024 does not deal with the objections as regards the issue of 'limitation'. However, the issue of 'limitation' was argued during the hearing dated 29.05.2024 in which even the Counsel for the Appellant stated no objection to the filing of the Order dated 17.03.2018 passed in O.A. No. 213/2013 which actually put the issue of 'limitation' to rest and nothing more was needed to be done. The relevant extract of the Order as follows:

> "IA-1592/2024
> Pursuant to the order dated 28.05.2024, Mr. Harshit Khare, Ld. Counsel has appeared on behalf of State Bank of India and responded to the objections raised by the Ld. Counsel for the Personal Guarantor. Mr. Harshit Khare, Ld. Counsel handed-over a copy of the order of the Order passed by the DRT in OA No. 213/2013 and a copy of the pass-port of Mr. Mahdoom Bava, the Personal Guarantor during the course of the arguments.
> Ld. Counsel for the Personal Guarantor has no objections for these documents, to be taken on record.
> We have heard the submissions made by the parties. The parties are at liberty to file written submissions, if any, within one week. AJAY Order Reserved."

12. With respect to the issue of Demand Notice under Rule 7 (1) of the IBC Rules of 2019, NCLT, in its Impugned Order dated 13.06.2024, and also by the Respondent No. 2-RP in its Report, has categorically stated that the Demand Notice dated 28.06.2021 under Rule 7 (1) of the 1BC Rules, 2019, was served to the Appellant on the address mentioned in his passport and bank records. Thus, the Appellant cannot argue that he should not have been

served at the address mentioned in his passport since the passport is a valid ID and address proof.

13. Even otherwise, the copy of the Demand Notice under Rule 7 (1) as also the copy of the Section 95 IBC Petition was sent to the Appellant by the Respondents. Thus, no prejudice has been caused to the Appellant as the dues and factum of guarantee are an admitted position and the Appellant failed to provide the details of repayment of debt.

14. It is to be noted that the PG has not denied that, pursuant to the sanction of credit facilities by the bank in favour of the CD, the PG executed various documents that were duly accepted by the CD and PG. The PG has not denied the execution of the personal guarantee. The PG has not denied the Demand Notice dated 26.12.2013 under Section 13(2) of the SARFAESI Act, 2002, calling to repay Rs 64,48,43,390.25/- (rupees sixty-four crores, forty-eight lakhs, forty-three thousand, three hundred and ninety and twenty-five paise only), and the PG has not raised any objection with regard to non-compliance of principles of natural justice by the Respondent No. 2-RP, while submitting the Report in terms of Section 99 of the Code. In view of this, the NCLT was completely correct and justified in admitting the Section 95 IBC Petition of the Respondent No.1-Bank seeking resolution of the Appellant.

15. On the issue of limitation, it is claimed that loan accounts of the CD, i.e. Naftogaz India Pvt Ltd, were classified as NPA on 13.06.2012, where-after a Demand Notice dated 26.12.2013 under Section 13 (2) of the SARFAESI Act, 2002, was issued to the CD and the Appellant, calling upon them to make repayment of Rs 64,48,43,390.25/- (rupees sixty-four crores, forty-eight

lakhs, forty-three thousand, three hundred and ninety and twenty-five paise only), within 60 days, followed by filing O.A. No. 133/2014 and O.A. No. 213/2014 ("erstwhile SBBJ") before the Debts Recovery Tribunal, New Delhi. O.A. No. 213/2014 was allowed by Order dated 17.03.2018 and the recovery certificate was issued on 17.03.2018, while the Section 95 IBC Petition was filed by the Respondent No. 1-SBI on 03.12.2022. After excluding the covid period between 15.03.2020 to 28.02.2022, from calculating the limitation period in view of the Order dated 10.01.2022 passed by the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No. 3 of 2020 - the Section 95 IBC Petition, having been filed on 03.12.2022, is perfectly within the limitation period of three years. In calculating from 17.03.2018, the limitation would stop to run on 14.03.2020 and again start running from 01.03.2022, thus, would expire in March 2023 only, if at all.

16. The exclusion of period between 15.03.2020 to 28.02.2022 in calculating the limitation period and giving the benefit of remaining period from 01.03.2022, finds support in the judgment dated 06.12.2022 rendered in CP (IB) No. 29 (CB)/2022: Canara Bank vs Grids Steel and Alloys Ltd., NCLT, Cuttack Bench; and also in judgment dated 20.03.2023 rendered in Company Appeal No. 25/252 (ND)/2022: Income Tax Officer-Ward 7 (1) New Delhi vs The Registrar of Companies & Ors., NCLT, New Delhi Bench, after relying upon the observations of the Hon'ble NCLAT passed in judgment dated 10.01.2022 in Company Appeal (AT) (Ins.) No. 936/2021: M/S Essjay Ericsson Pvt Ltd vs M/S Frontline (NCR) Business Solutions Pvt Ltd.

17. Thus, once the Section 95 IBC Petition is within the limitation, the objection/contention of the Appellant has to be rejected.

18. The Appellant is trying to build its case that the Impugned Order dated 13.06.2024 does not deal with the objections as regards the issue of 'limitation'. However, the issue of 'limitation' was already argued during the hearing dated 29.05.2024 in which even the Counsel for the Appellant stated no objection to the filing of the Order dated 17.03.2018 passed in O.A. No. 213/2013, which actually put the issue of 'limitation' to rest and nothing more was needed to be done.

19. With respect to this issue of Demand Notice under Rule 7(1) sent to the wrong address by the Financial Creditor, it has been recorded in the Impugned Order dated 13.06.2024, and also by the Respondent No. 2-RP in its Report that the Demand Notice dated 28.06.2021 under Rule 7 (1) of the IBC Rules, 2019, was served to the Appellant on the address mentioned in his passport and bank records. Thus, the Appellant cannot argue that he should not have been served at the address mentioned in his passport, since a passport is a valid ID and address proof. It will be a travesty if the Appellant states that he continued to hold a passport on the address where he did not stay. Even otherwise, the copy of the Demand Notice under Rule 7 (1), as also the copy of the Section 95 IBC Petition, was again sent to the Appellant by the Respondents, thus, no prejudice has been caused to the Appellant as the dues and factum of guarantee are an admitted position and the Appellant failed to provide the details of repayment of debt even after receiving the Demand Notice under Rule 7 (1) and the copy of the Section 95 IBC Petition

twice. It has been recorded in the Impugned Order dated 13.06.2024 that the Respondent No.1- SBI served the Demand Notice at the address given in the passport of the PG and the KYC documents available with the bank and, therefore, it cannot be said that the Demand Notice was served at the wrong address. Further, the Respondent No. 1-SBI had shared the copy of the Demand Notice sent to the PG along with a copy of the outward dak register dated 30.06.2021 to the Respondent No. 2-RP through email dated 26.02.2024. The said Demand Notice, as sent on 30.06.2021, was never received back in the branch.

20. In view of the above, the objection of the Appellant that the Demand Notice under Rule 7 (1) was not served to the Appellant is out of place and ought to be rejected.

21. It is claimed that the purpose of the Demand Notice under Rule 7 (1) is to call upon the PG to make payment of the amount of debt in default within 14 days. Even if, assuming without admitting that the PG received the copy of the said Demand Notice dated 28.06.2021 after filing of the Section 95 IBC Petition - notwithstanding the fact that the Appellant was served with the Demand Notice under Section 13 (2) of SARFAESI Act, and was also served with the Notice in the O.A.s - the Appellant never made payment of the amount of debt in default to the Respondent No. 1-SBI even during the pendency of the Section 95 IBC Petition. Thus, the NCLT has rightly rejected the objection/contention of the Appellant as regards serving of the Rule 7 (1) Notice.

22. On the issue that the amount sought for in the Demand Notice and the Section 95 of IBC Petition are vague, it is contended that the Respondent No. 1-SBI had duly provided the amount of debt in default as also the copy of statement of accounts to the PG. Thus, the objection/contention of the Appellant that the amount mentioned is vague is without legs. Moreover, the amount of debt in default was stated to be more than Rs 264 crores, which the Respondent No. 2-RP would always analyse while collating the claims. In any case, the Hon'ble NCLAT in 'Company Appeal (AT) (Ins) No. 662-663 of 2022: Suzlon Synthetics Ltd vs Stressed Asset Stabilisation Fund (2022) 145 taxmann.com 594 (NCLAT-New Delhi)' has held that the Adjudicating Authority does not have to calculate and fix the amount in default but only has to see that the amount in default is more than the threshold. In view of this, since the amount of debt in default is more than Rs 264 crores, it would be more than Rs 1 crores by any calculation. Hence, the Hon'ble NCLT was correct in admitting the Section 95 IBC Petition of the Respondent No. 1-SBI.

23. The contention/objection of the Appellant that the Demand Notice under Rule 7 (1) and the Section 95 IBC Petition have no foundation of loan amount of SBBJ Bank - is absolutely wrong, incorrect and frivolous. The Demand Notice dated 28.06.2021 under Rule 7 (1) clearly states the loan account numbers (both SBI and SBBJ - the SBBJ merged into the SBI w.e.f. 01.04.2017) and the amount of debt in default i.e. Rs 264,61,85,998/- (rupees two hundred and sixty-four crores, sixty-one lakhs, eighty-five thousand, nine hundred and ninety-eight only) as on 31.05.2021 was in respect of all the four loan accounts. Thus, it is wrong to suggest that the Demand Notice under Rule 7 (1) and the Section 95 IBC Petition have no

foundation of loan amount of SBBJ Bank. This objection was taken by the Appellant only to somehow deny the Respondent No. 1 – SBI the benefit of the O.A. Order/recovery certificate dated 17.03.2018 passed in O.A. No. 213/2014, which even though was filed by the erstwhile SBBJ. However, on its merger with the SBI w.e.f. 01.04.2017, the said O.A. No. 213/2014 is also prosecuted by the Respondent No. 1-SBI only. The merger was also prior to the final Order dated 17.03.2018 in the O.A. No. 213/2014. Thus, the Appellant cannot deny the benefit of the said Order/recovery certificate dated 17.03.2018 to the Respondent No. 1-SBI.

24. On the issue that service of notice under Section 13(2) of SARFAESI Act cannot be treated as service of Demand Notice under Rule 7(1), submitted that the NCLT never said that in view of service of notice under Section 13(2) of SARFAES1 Act, service of Demand Notice under Rule 7 (1) is not required. This was never the purport of the Impugned Order dated 13.06.2024. After duly recording in the Impugned Order dated 13.06.2024 that the PG never· denied the execution of loan documents and sanction of credit facilities to the CD and also never denied the execution of the personal guarantee and that the PG never raised objection as to any violation of principles of natural justice and that the Demand Notice under Rule 7 (1) was served on the address mentioned in the passport of the Appellant, the Hon'ble NCLT returned a finding at para 28 against the PG. (emphasis added)

25. In view of the above, it is very clear that the Hon'ble NCLT did not say that since 13 (2) Notice is served, the service of Rule 7 (1) Notice is not necessary - but came to the above conclusion after dealing in detail with the

facts and circumstances of the present case, which did not leave an iota of doubt about the liability and default of the Appellant being the PG for credit facilities advanced to the CD. Thus, this objection of the Appellant also deserves rejection.

26. All the challenges, allegations of the Appellant are only technical in nature to divert the attention which have no bearing on the Section 95 IBC Application. Thus, they cannot be entertained and are denied strongly. The Appeal is without merit. Therefore, in view of the above, the Impugned Order dated 13.06.2024 as passed by the Hon'ble Adjudicating Authority is perfectly legal and justified. Thus, no interference in the said Impugned Order is called for in this Appeal.

<u>Appraisal</u>

27. Heard Counsels from both sides and also perused materials on record and noted the directions of the Hon'ble Supreme Court in Civil Appeal No. 8622 of 2024 in its Order dated 20.08.2024 of which the relevant extract is as follows:

> "1. The Appeal arises from an interlocutory order dated 16 July 2024 of the National Company Law Appellate Tribunal.
> 2. The proceedings have been posted for hearing before the NCLAT on 2 September-2024. Hence, we are not exercising jurisdiction at this stage.
> 3. All the questions of law which have been raised by the appellant, may be addressed before and will be considered by NCLAT, when the proceedings will be taken up on 2 September 2024.
> 4. The Appeal is accordingly dismissed.
> 5. Pending applications, if any, stand disposed of."

The Appellant is aggrieved with the order of the Adjudicating Authority which concludes as follows:

"25. Be that as it may the Personal Guarantor has not denied that pursuant to the sanction of the credit facilities by the Applicant Bank in favour of the Corporate Debtor, the Personal Guarantor executed the various documents which was duly accepted by the Corporate Debtor and the Personal Guarantors.

26. The Respondent has also not denied that the demand notice dated 26.12.2013 under Section 13(2) of SARFAESI Act, 2002 calling upon to repay Rs. 64,48,43,390.25/ - (Rupees Sixty Four Crores Forty Eight Lakhs Forty Three Thousand Three Hundred Ninety & Paise Twenty Five Only).

27. We have also noticed that the Respondent-Personal Guarantors have not raised any objection with regard to non-compliance of Principles of Natural Justice by the Resolution Professional while submitting the report in terms of Section 99 of the Code, 2016.

28. We are therefore of the considered view that non-service of demand notice as alleged by the Respondent-Corporate Debtor (sic. Personal guarantor) will not absolve the Respondent Personal Guarantor from discharging its liability under the Deed of Guarantee. Particularly, in view of the fact that the Personal Guarantor has not denied the execution of the Personal Guarantee and service of the notice under 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002."

28. The Appellant is aggrieved that all his objections have not been adjudicated.

29. Basis the materials placed on record and the oral arguments, the main issues before us are as follows:

i. Whether the Section 95 IBC Petition was barred by limitation or not
ii. Whether the Demand Notice under Rule 7(1) of the IBC Rules, 2019, dated 28.06.2021 was sent to the wrong address by the Financial Creditor;
iii. Whether the amount sought in the Demand Notice and the Section 95 IBC Petition are vague;
iv. Whether the Demand Notice under Rule 7(1) of IBC Rules, 2019, and the Section 95 IBC Petition has no foundation of the loan amount of SBBJ Bank; and

30. Since all the issues are intricately related with each other, wherever possible they are being dealt in separately.

31. Firstly, we look into the issue relating to the non-service of the Rule 7(1) Demand Notice in IBC proceedings of Section 95. It is contended by the Appellant that the Demand Notice under Rule 7 was sent at E-14/13, Ground Floor, Vasant Vihar, New Delhi-110070, which was the address of the Company in liquidation (as on 08.10.2012) and where the Appellant was residing in 2012 till possession was taken over by OL. It is the contention of the Appellant that Respondent-Bank was aware of 64 Poorvi Marg since 2014 as the summons in O.A. No. 133 of 2014 were sent to Poorvi Marg address of the Appellant. Also, in RC No. 416 of 2018 the Income Affidavit dated 10.11.2020 was filed by the Appellant with advance copy to SBI Counsel, wherein correct email ID, address of Poorvi Marg and mobile number were duly provided. Further, Section 13(2) Notice dated 26.12.2013 by SBI to the Appellant was also addressed at 64, Poorvi Marg. O.A. No. 213/2014 of the SBBJ would also show that Poorvi Marg address of Appellant was known to SBI on 03.07.2014 also. Argument of the Respondent-Bank that Notice was served at the address of the Appellant as mentioned in his passport and at the address given in the Deed of Guarantee etc. is also of no consequence as the Respondent-Bank was always aware of the Poorvi Marg address of the Appellant. Further, it is contended that IRP has served the copy of Demand Notice under Rule 7 to Appellant is of no consequence as Notice under Rule 7 has to be served to PG before filing a Section 95 Petition, not thereafter. If a law requires something to be done in a particular manner, then it must be

done in that manner, and if it is not done in that manner, then it would have no existence in the eye of the law. Service of Demand Notice under Rule 7(1) is mandatory before filing of Application under Section 95 and service of same after filing of Section 95 Application is not in accordance with law.

32. The Respondent-Bank contends that the Rule 7 Notice, along with Section 95 IBC Petition, was again served on the PG through official email ID (bava@naftogaz.co.in) on 03.12.2022 and Rule 7 Notice, along with Section 95 Petition, was once again served by the SBI on the PG at his new Chennai address on 15.03.2024, as sent on 11.03.2024. The RP could deliver the intimation to the PG only on 08.02.2024 because the RP could not reach out to the PG on the three available addresses of Delhi NCR. Chennai address was not in the knowledge of anyone except PG. Despite repeated service of Rule 7 Demand Notice and Section 95 IBC Petition, the PG did not make any payment towards the liability, thus, no prejudice is caused to the PG to raise the allegation that Rule 7 Notice was not received by him earlier. It is also contended that the purpose of Rule 7 Demand Notice is to give 14 days' time to the PG to make payment or submit proof of payment. However, in the present case the PG got more than 2 years, yet did not submit any proof of payment. Hence, the Section 95 Petition was finally admitted on 13.06.2024. The Adjudicating Authority, while looking into the claims of the contesting parties in the Impugned Order dated 13.06.2024, has reached the following conclusion:

> "28. We are therefore of the considered view that non-service of demand notice as alleged by the Respondent-Corporate Debtor (sic. Personal guarantor) will not absolve the Respondent Personal Guarantor from discharging its liability under the Deed of Guarantee. Particularly, in view

> of the fact that the Personal Guarantor has not denied the execution of the Personal Guarantee and service of the notice under 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002."

33. It is vehemently contended by the Appellant that the above observation in the Impugned Order that the non-service of Demand Notice to the Appellant will not absolve him from discharging his liability as the Appellant has not denied the service of Notice under Section 13(2) of SARFAESI Act is totally illegal. It is claimed that Rule 7 Notice cannot be substituted with Section 13(2) SARFAESI Notice. The nature of both the Notices are entirely different and one cannot substitute the other. The Appellant has given an example of a cheque bouncing notice under Section 138 of NI Act which cannot substitute a winding up Notice under Section 433 of the Companies Act. Similarly, a winding up notice under Section 433 cannot substitute a Section 13 (2) SARFAESI Notice. We find merit in the arguments of the Appellant but in the facts of the case sufficient time was available to the Appellant to provide repayment plan.

34. Even though there have been claims and counter claims with respect to the service of the Demand Notice and also Section 95 Application, we find that it was the duty of the Appellant to have notified the current address to appropriate authorities, including banks and passport office when they had moved to Chennai. The RP was in touch with him later on even on WhatsApp and the Appellant had also filed his objections on the Report of the RP. In the circumstances of the case, we therefore don't find any infirmity on the findings of the Adjudicating Authority on this count. Further, the purported non-service of Demand Notice under Rule 7(1) will not have any material

impact on the main issue, which is being examined in subsequent paragraphs.

35. We now look into the main issue whether the Section 95 IBC Petition was barred by limitation or not. On the question of limitation, we note that the Appellant had vehemently opposed it before the Adjudicating Authority. It is claimed that Personal Insolvency Resolution Process was initiated without considering the preliminary objection qua limitation, which goes into the root of the matter.

36. As a recap, Naftogaz India Private Limited went into liquidation - vide Order dated 08.12.2012 in Company Petition No. 128/2011- which was passed by Hon'ble High Court of Delhi on account of non-payment of the credit facilities which had been availed by the Company from SBI and SBBJ. SBI sent a Demand Notice dated 26.12.2013 under Section 13(2) of SARFAESI Act, calling upon the Official Liquidator - OL and the Appellant-PG to repay the amount of about Rs 64.48 crores (pg 513 APB), which was outstanding as on 25.12.2013. This amount related to credit facilities provided by SBI under account nos. (CC(SBI)-30451182299 and BG(SBI)-30449964100). Later on, in the year 2014, pursuant to the SARFAESI Act proceedings, SBI filed O.A. No.133/2014 before DRT, New Delhi, with the title of SBI vs Naftogaz India Private Limited to recover this amount. The same is still pending adjudication till date. No decree has been passed in the same. After almost 7 years, the Respondent No.1-SBI sent a Demand Notice dated 28.06.2021 (pg 541 to 545 of APB), under Rule 7(1) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process Guarantors to

Corporate Debtors) Rules, 2019, for initiating Section 95 proceedings against the PG. This Notice claimed a demand of Rs 264.61 crores (approximately), with a date of default of 25.01.2014, which includes not only the credit facilities provided by SBI, but also by SBBJ (pg 542 of APB) - as by that time the two banks - namely SBI and SBBJ had merged into SBI as on 31.03.2017 and the Notice combined demands of both banks without specifying details of individual accounts. Perusal of the Sl. No. 3 and 4 in the particulars of debt (at pg 541 of the APB) show that due date was 26.12.2013 and the default had occurred on 25.01.2014. The relevant extract is reproduced as follows:

"FORM B
[SEE RULE 7(1)]
FORM OF DEMAND NOTICE

Under Rule 7(1) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process Guarantors to Corporate Debtors) Rules 2019

<table>
<tr><td>1.</td><td>Total outstanding debt (Including any Interest or penalties)</td><td>Rs.264,61,85,998.00 (Rs. Two hundred sixty four crore sixty one lacs eighty five thousand nine hundred ninety eight) as on 31.05.2021.</td></tr>
<tr><td>2.</td><td>Amount of debt in default</td><td>Rs.264,61,85,998.00 (As on 31.05.2021)</td></tr>
<tr><td>3.</td><td>Date when the debt was due</td><td>26.12.2013 (Notice u/s 13(2) of SARFAESI Act)</td></tr>
<tr><td>4.</td><td>Date when the default occurred</td><td>25.01.2014</td></tr>
<tr><td>5.</td><td>Nature of the debt</td><td><table><tr><th>Sr. No.</th><th>Facility</th><th>A/c No.</th></tr><tr><td>1</td><td>CC (SBI)</td><td>30451182299</td></tr><tr><td>2</td><td>BG(SBI)</td><td>30449964100</td></tr><tr><td>3</td><td>CC(SBBJ)</td><td>61253087296</td></tr><tr><td>4</td><td>BG(SBBJ)</td><td>61074975160</td></tr></table></td></tr>
<tr><td>6.</td><td>Secured debt including particulars of security held, the date of its creation, its estimated value as per the creditor (as applicable), and details of securities.</td><td></td></tr>
<tr><td>7.</td><td>Unsecured debt (as applicable)</td><td>Rs. 264,61,85,998.00 (Rs. Two hundred sixty four crore sixty one lacs eighty five thousand nine hundred ninety eight) as on 31.05.2021."</td></tr>
</table>

37. To find out the merits of the claims of Respondent Bank, relevant particulars of the Section 95 Application are also extracted as follows:

"FORM C
[SEE RULE 7(2)

"[APPLICATION BY CREDITOR TO INITIATE INSOLVENCY RESOLUTION PROCESS]

"(Under Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019

1.	Total debt (including Rs.315,30,80,207.78/- any interest penalties)	(Rupees Three Hundred Fifteen Crores Thirty Lakhs Eighty Thousand Two Hundred Seven & Paise seventy-Eight Only)
3.	Amount in default	Rs. 315,30,80,207.78/- as on 30.06.2022 payable by the Personal Guarantor i.e. Mr. Mahdoom Bava Bahrudeen, jointly and severally, together with future interest applicable including penal interest and charges on actual basis from 13.06.2012 when account was declared NPA.
4.	Date on which default occurred	**13.06.2012** Account of the Corporate Debtor stood classified as NPA. **17.04.2012** Letter was written by the Corporate Debtor admitting to liabilities to the bank. **26.12.2013** The Applicant bank issued a demand notice dated 26.12.2013 to the Corporate Debtor through the Official Liquidator. **26.12.2013** The Applicant Bank issued a notice under SARFAESI Act. **25.03.2014** The Applicant Bank filed an Original Application bearing no. OA No. 133 of 2014 before DRT -II. **28.06.2021** The Applicant Bank sent demand notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtor) Rules, 2019 upon Mr. Bahrudeen Nooral Ameen Mahdoom Bava (Personal Guarantor).
5.	Nature of the debt	Unsecured Debt."

38. Perusal of Form B and Form C [as extracted above] and SARFAESI Act Demand Notice shows that:

- o Accounts of the Company had become NPA on 13.06.2012 (SBI)/ 28.01.2012 (SBBJ); both SBI and SBBJ had not merged at that point of time.
- o Section 13(2) Notice dated 26.12.2013 under SARFAESI Act was issued by SBI to the Company with a demand of about Rs 64.48 crores.
- o Rule 7(1) Notice dated 28.06.2021 under IBC proceedings shows demand of about Rs 264.61 crores as on 31.05.2021. These were for four account numbers -two relating to SBI and two to SBBJ but without details of individual account numbers.
- o Section 95 r/w Rule 7(2) Application dated 03.12.2022 under IBC shows total debt of about Rs 315 crores at Sl No. 1 in Part III as on 20.06.2022. Only statement of loan account of SBI was filed with Section 95 Application. There are no details of other individual account numbers.

39. Now when we closely look into the debt and default as claimed by the Respondent-Bank under Section 95 of the Code, we find that the Demand Notice under Section 13(2) of SARFAESI Act was with respect to default of the loan of SBI. Later on, in the Demand Notice under Rule 7(1) and also under Rule 7(2) under the IBC, for the first time, the Respondent Bank included the outstanding loan with respect to SBBJ also for an amount of Rs 264/Rs 315 crs but is bereft of details except for account numbers without giving details in each account and when it became NPA and what is the date of default for each account. The contention of the Appellant that whether the service of Notice under Section 13(2) of SARFAESI Act be treated as service of Demand Notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to

Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rule, 2019 or not is concerned, we find that it is not on any basis as the notice under Rule 7(1) has been issued separately in Form B as extracted above.

40. We further find that the Appellant has been able to demonstrate that the said amount of Rs 315 crores as in Section 95 application is an approximate total of SBI's A/c No. 30451182299 [pg 535 APB] i.e. Rs 264 crores and A/c No. 61029643854 [pg 539 APB at the bottom] i.e. Rs 51.23 crores totalling to Rs 315 crores. And the later account [A/c No. 61029643854] has nothing to do with SBBJ as the account numbers mentioned in the Demand Notice under Rule 7(1) for SBBJ are 61253087296 and 61074975160 [pg 542/5 APB]. Thus, we find that in both the Rule 7(1) Demand Notice and Section 95(1) of IBC Application, the Respondent No.1-SBI through RP has given a total claim without giving the details in the particulars. And the Appellant has been able to explain that this amount pertains to SBI only and rest amount pertains to some unrelated account of SBBJ.

41. In the above background we now calculate the period of limitation which would start running from the date of NPA of 13.06.2012. At best the limitation would start from Section 13(2) Notice dated 26.12.2013, when demand was made from the Appellant. Since Demand Notice under Rule 7(1) was issued on 28.06.2021, and the Application under Section 95 was filed on 03.12.2022, we find that the said Application is prima facie beyond three years and is time barred. Without giving the details of each account, the Respondent No.1-SBI

cannot overcome the limitation. A defence of the covid period has been taken by the Respondent-Bank. Even after excluding the covid period from 15.03.2020 to 28.02.2022, which is as per the Orders dated 10.01.2022 of the Hon'ble Supreme Court in Suo Moto Writ Petition (C) No. 3 of 2020, we find that the Rule 7(1) Notice has been issued much beyond three years. This argument, therefore, doesn't come to help of the Respondent-Bank. We therefore, find that the notices for debt and default under Rule 7(1) and Rule 7(2) are issued much beyond three years from the date of default and are therefore barred to be proceeded under the Limitation Act.

42. It is claimed by the Respondent-Bank that during the hearing before the Adjudicating Authority on 29.05.2024, the issue of limitation was argued, and as the Counsel for the Appellant had no objection to the filing of the Order dated 17.03.2018 passed in O.A. No.213/2013, therefore it puts the issue of limitation to rest and nothing more was needed to be done. The Orders which capture this are extracted as below:

> "IA-1592/2024
> Pursuant to the order dated 28.05.2024, Mr. Harshit Khare, Ld. Counsel has appeared on behalf of State Bank of India and responded to the objections raised by the Ld. Counsel for the Personal Guarantor. Mr. Harshit Khare, Ld. Counsel handed-over a copy of the order of the Order passed by the DRT in OA No. 213/2013 and a copy of the pass-port of Mr. Mahdoom Bava, the Personal Guarantor during the course of the arguments.
> Ld. Counsel for the Personal Guarantor has no objections for these documents, to be taken on record.
> We have heard the submissions made by the parties. The parties are at liberty to file written submissions, if any, within one week. Order Reserved."

43. Respondent also claims that the Appellant is somehow trying to deny the Respondent No.1-SBI to take the benefit of O.A. Order / recovery

certificate dated 17.03.2018 passed in O.A. No.213/2013. We find that this argument is not based on materials on record as noted below. The Respondent contends that even though it was filed by the erstwhile bank namely SBBJ, yet on its merger with SBI w.e.f. 01.04.2017, the said O.A. No.213/2013 was being prosecuted by the Respondent No.1-SBI only. The merger was also prior to the final Order dated 17.03.2018 in the O.A. No. 213/2013. It claims that the Appellant cannot deny the benefit of the said Order / recovery certificate dated 17.03.2018. It is also vehemently contended by the Respondent-Bank that once the debt and default is clearly admitted and no repayment plan is available from the PG, the only consequence is the Section 100 order. It claims that the Court may not go into the question of the exact amount in such a situation because after the claims are called out by the RP, the PG is within its rights to provide a repayment plan as per his calculations and ability, which the Committee of Creditors (CoC) may agree or reject. Thus, the veracity of the exact amounts or accounts may not be disputed at the stage of Section 100 since, admittedly, the PG has neither made any payment nor provided proof of repayment. The Respondent Bank claims that details of amounts as per different accounts are not relevant as long as it is more than Rs 1 crore. It contends that if mere technical objections are entertained then no resolution would ever be successful even when there is a clear debt and default on the part of the Appellant and no prejudice has been caused to the Appellant.

44. To understand whether O.A. No.213/2013, as noted above, supports the case of the Respondent Bank, we note that the SBBJ had filed O.A. No.213/2013 before Hon'ble DRT, New Delhi in which the judgment and decree for Rs 17.63 crores were passed on 17.03.2018 in this matter. It is to

be noted that the O.A. No. 213/2014 was allowed by Order dated 17.03.2018 and the recovery certificate was issued on 17.03.2018 while the Section 95 IBC Petition has been filed by the Respondent No. 1-SBI on 03.12.2022, which is much later in time. Even then these RC proceedings, if they were of any help, do not find mention in the Section 95 proceedings, when they were filed.

45. To know the veracity of the claims of the Respondent-Bank, we test the Section 95 Application against the provisions of the Code and we find some crucial omissions and deficiencies in this application. For appreciating them, the relevant Sub-Section 4 of Section 95 is extracted herein:

> "95(4) An application under sub-section *(1)* shall be accompanied with **details and documents** relating to—
>
> > (a) the **debts owed by the debtor to the creditor or creditors** submitting the application for insolvency resolution process as on the date of application;
> > (b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and
> > (c) relevant evidence of such default or non-repayment of debt."

As per the legal provisions in the Section 95 of Code, the Application has to provide ***"details and documents"*** **relating to the debts owed by the debtor to the creditor or creditors.** Testing the present case against this provision under Section 95(4), we find that the Section 95 Application suffers from various deficiencies, which have also been specially agitated by the Appellant. From the materials on record, we find that in the Notice under Rule 7, debt demanded was pertaining to SBI A/c No. (1) 30451182299 and (2) 30449964100, SBBJ A/c No. (3) 61253087296 and (4) 61074975160. But the Respondent-Bank filed statement of account of only one out of the aforesaid four accounts, that is, SBI A/c No. 30451182299 and another statement of account i.e. A/c No. 61029643854, which was not even part of the accounts mentioned in the earlier Notice under Rule 7. Interestingly, we find that the total of the two statement of accounts is about Rs 315 crores, which is the amount mentioned in the Section 95 Application under IBC. We find that the Application under Section 95 is incomplete as it doesn't fully comply with the legal provisions of the Code under Section 95 as it failed to provide *"details and documents"* relating to the debts owed by the debtor to the creditor. Perusal of Section 95 Application persuades us to agree with the contentions of the Appellant that in the Section 95 Application, the entire reference is to the correspondence pertaining to SBI and not SBBJ and the Respondent has tried to bring in the Order of the DRT to ensure that Application under Section 95 comes within limitation and for that purpose referred to O.A. 213/2014 by SBBJ [in which RC dated 17.03.2018 for Rs 17.63 crores was passed], which was not done at the time of filing of Section 95 Application which was filed on 03.12.2022 which is later than orders of RC on 17.03.2018. The argument of the Respondent that the question of limitation was waived by the Appellant, since the Appellant consented to take on record Order dated 17.03.2018 is also not tenable as the Appellant clearly distinguished the amount of Rs 315 crores sought in the Section 95 Application from the decree passed in favour of SBBJ, which has been further noted by us separately in the judgment. As found by us in the earlier parts of our judgement, the outstanding demand with respect to the account of unmerged SBI bank was time barred. Whether limitation gets extended or not needs to be specifically concluded after linking appropriate SBBJ account numbers with both the account numbers in OA 213/2024 and also Section 95 application.

46. In conclusion, we find that the Applications under Rule 7(1) or Rule 7(2) / Section 95 have been deficient in providing details of individual accounts with respect to amounts, date of defaults, statement of accounts and dates of Notices and linking each individual account with the total amount claimed in the Section 95 Application. By providing a broad figure of Rs 315 crores, the demand becomes vague. Further directly linking of Application under Rule 7(2) / Section 95 with DRT Orders/decree is also not fully established. It is to be noted that DRT proceedings under SBBJ account were notified on 17.03.2018 for Rs 17.63 crores and at the time of filing of the Section 95 proceedings on 03.12.2022, the Respondent Bank was aware of the DRT proceedings. Even then it had not used them as an argument in the Section 95 Application at the time of filing this Application and later on in the hearing on 29.05.2024 it filed the order which was of an earlier date of 17.03.2018.

47. In this background, we find that the Adjudicating Authority had allowed the Counsel for the Respondent No.1-SBI to hand over a copy of the Order of DRT during the course of arguments. Only concession which has been recorded is that the PG had no objection for these documents to be taken on record. Having done so, we find that the Adjudicating Authority has based its judgment solely on this decree to overcome the period limitation. The Appellant was well within its rights to raise all the issues relating to the Rule 7(1) and Section 95 Application when the issue of DRT was not raised in Section 95(1) Application after conclusion of the arguments. In this background, the contention of the Appellant that this is not a case where there is a question of threshold value of Rs 1 crore but is a case where debt

of Rs 315 crores sought in Section 95 Application is not correlating with account numbers and amounts of Notice under Rule 7. Thus, it doesn't satisfy the requirements of providing *"details and documents"* relating to the debts owed by the debtor to the creditor.

48. From the facts on record, we find that the Section 95 application doesn't satisfy the requirements of *"details and documents relating to debts owed by the debtor to the creditor or creditors"* as provided under Section 95 (4) of the Code. We also find that all objections relating to Section 95 proceedings have not been disposed of, particularly relating to sufficient details and documents with respect to individual accounts in default. The total amount of default as claimed in the Section 95 application has to be individually substantiated with the details of separate accounts, particularly in the facts of the case, where two separate Banks merged and when earlier separate accounts were being maintained in different Banks and separate recovery proceedings were being pursued by both SBI & SBBJ separately. Be that as it may, in the interests of natural justice we find it appropriate to remand this case back to the Adjudicating Authority to examine all the objections relating to the details of individual accounts and their dates of default and whether debt is time barred - in full or in part amount - due to RC under SARFAESI Act 2002 and arrive at a conclusion.

Order

49. Accordingly, in the facts and the circumstances of the case, the personal insolvency proceedings are remanded back to the Adjudicating Authority to determine afresh the limited question of whether on the basis of the materials on record the debt is barred by limitation or not and whether in

full or in part amount and accordingly determine the issue of personal insolvency against the Appellant. Both parties are at liberty to raise all contentions before the Adjudicating Authority with respect to the issue in hand for determining whether the debt is time barred or not and whether for full or part amount and whether Section 95 proceedings are maintainable or not. The order impugned dated 13.06.2024 is set aside. We make it clear that we are not expressing any concluded opinion on the issues raised and it is for the Adjudicating Authority to consider the submissions and materials on the record and take a decision.

[Justice Ashok Bhushan]
Chairperson

[Arun Baroka]
Member (Technical)

New Delhi.
February 12, 2025.

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